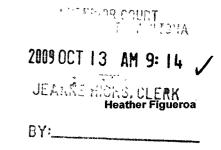
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IN THE SUPERIOR COURT OF STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	Cause No. P1300CR20081339	
Plaintiff,	Division 6	
v.	STATE'S RESPONSE TO DEFENDANT'S MOTION TO REQUIRE THE STATE TO	
STEVEN CARROLL DEMOCKER,	ELECT WHICH OF THE (f)(6) AGGRAVATORS IT IS ALLEGING IN	
Defendant.	ADVANCE OF OCTOBER 20, 2009 EVIDENTIARY HEARING ON PROBABLE CAUSE	

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Require the State to Elect Which of the (f)(6) Aggravators It Is Alleging in Advance of October 20, 2009, Evidentiary Hearing on Probable Cause. At the October 20, 2009 hearing, the State will show there is probable cause to believe Defendant committed the brutal murder of his ex-wife, Carol Kennedy, in both a cruel and depraved manner pursuant to A.R.S. § 13-703(f)(6)¹.

"The element of cruelty focuses upon 'the pain and the mental and physical distress visited upon the victim,' while depravity focuses upon 'the mental state and attitude of the

Renumbered as A.R.S. § 13-751(f)(6) effective January 1, 2009.

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perpetrator as reflected in his words and actions." *State v. Villafuerte*, 142 Ariz. 323, 331, 690 P.2d 42, 50 (1984) (citations omitted).

Cruelty involves the infliction of physical pain and/or mental anguish on a victim before death. A crime is committed in an especially cruel manner when a defendant either intended to inflict mental anguish or physical pain upon the victim, or reasonably foresaw there was a substantial likelihood the manner in which the crime was committed would cause the victim to experience mental anguish and/or physical pain before death.

State v. Velazquez, 216 Ariz. 300, 308, 166 P.3d 91, 99. (2007).

The heinous and depraved portion of the (F)(6) aggravator focuses on the defendant's state of mind at the time of the crime. *Gretzler*, 135 Ariz. at 51, 659 P.2d at 10. However, the inquiry concentrates on the defendant's mental state as evidenced through her actions. *State v. Rienhardt*, 190 Ariz. 579, 590, 951 P.2d 454, 465 (1997). The factors used to establish a heinous and depraved state of mind are (1) relishing the killing, (2) *commission of gratuitous violence*, (3) *mutilation of the victim*, (4) senselessness of the killing, and (5) helplessness of the victim.

State v. Carlson, 202 Ariz. 570, 583-84, 48 P.3d 1180, 1193-94 (2002) (emphasis added).

Gratuitous violence occurs when the defendant uses violence in addition to that necessary to kill and intends to inflict such violence. State v. Bocharski, 218 Ariz. 476, 494, ¶¶ 85, 87, 189 P.3d 403, 421 (2008). It may be demonstrated by the continued infliction of violence after the defendant knew or should have known that a fatal action had occurred.

State v. Bearup, 221 Ariz. 163, ¶ 52, 211 P.3d 684, 694 (2009) (emphasis added).

Carol was on the phone with her mother when she suddenly said "Oh no," and the call disconnected. This indicates that Carol was aware that an attack was forthcoming. Carol had several defensive wounds which indicate she was conscious, aware, and alert at the time of the attack. Carol was discovered lying in a pool of her own blood. Carol's body was dragged and repositioned to make it appear that her death had been caused by an accidental fall.

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The medical examiner and forensic examiner determined that Carol was the victim of at least seven massive blows with a golf-club like object. The blows caused nine scalp lacerations varying in length from 1.5 to 4 inches, a fractured glabella (the area between the eyebrows just above the nose), and multiple skull fractures. Six of the blows resulted in either contusion to or penetration into Carol's brain tissue. Portions of Carol's brain tissue were protruding from the 4 inch laceration likely caused by the most forceful blow. Carol also suffered hemorrhage and lacerations to the ligaments in her neck which are consistent with an extreme extension injury of the head and neck with elevation to the chin. In other words, Carol's head was thrust up and back with such force that the ligaments in her neck were torn.

There is no doubt that Carol experienced severe mental anguish and physical pain before her death and that her murder was committed with gratuitous violence. The severity of the wounds alone demonstrates the ferocity of the attack. Carol was severely beaten, resulting in visible facial and skull fractures, mutilation to her head and face, and substantial blood loss. This evidence establishes probable cause for the cruelty prong. Likewise, the sheer number of blows in addition to the viciousness with which they were delivered causing the multiple lacerations to Carol's face and resultant mutilation which left Carol's skull in over 50 pieces show that Defendant used "violence in addition to that necessary to kill and intend[ed] to inflict such violence." *Bearup*, 221 Ariz. at ¶ 52, 211 P.3d at 694. This establishes probable cause for the depravity prong.

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RESPECTFULLY SUBMITTED this 3 October, 2009.

Sheila Sullivan Polk

YAVAPAI COUNTY ATTORNEY

By: // Cer

Toseph C/Butner
Deputy County Attorney

COPIES of the foregoing delivered this 13th day of October, 2009 to:

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By: Web Cowell